IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7751 of 1999

with

SPECIAL CIVIL APPLICATION No 7753 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGWATI AGRO CONSUMER SANSTHA

Versus

INDIAN OIL CORPORATION

Appearance:

1. Special Civil Application No. 7751 of 1999

MR MH RATHOD for Petitioner

MR GN SHAH for Respondent

2. Special Civil ApplicationNo 7753 of 1999

MR MH RATHOD for Petitioner

MR GN SHAH for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 09/08/2000

COMMON ORAL JUDGEMENT

Rule. Mr GN Shah, learned counsel waives service

of Rule for the respondent.

2. In these petitions under Article 226 of the Constitution, the petitioners have prayed for a writ of mandamus to direct the Indian Oil Corporation (hereinafter referred to as "the respondent") to release the supply of diesel to the petitioners and have also prayed for compensation for non-supply of diesel till date.

3. The petitioners had applied for consumer diesel pumps for the members of the petitioner-societies as the petitioners are agricultural co-operative societies in rural areas and their members i.e. the farmers require diesel for running tractors and agricultural implements for agricultural purpose and the regular retail diesel outlets of the respondent are away from the fields of the members of the petitioner-societies.

3.1 The petitioner of Special Civil Application No. 7751/99 (M/s Bhagwati Agro Consumer Sanstha) had applied for consumer pump of HSD (Diesel) on 21.11.1994. By its letter dated 7.12.1994 (Annexure "B"), the respondent informed the petitioner that its request for consumer pump was approved and a copy of the lay out plan was also sent by the respondent. The respondent also requested the petitioner to obtain No Objection Certificate from the Collector and the necessary explosive permission from the Deputy Chief Controller of Explosives, Bombay. The District Magistrate, Ahmedabad gave his no objection certificate dated 21.3.1995 (Annexure "D") and the Joint Chief Controller of Explosives (West Circle), Mumbai granted the license for explosives on 5.4.1995 (Annexure "C"). As stated in the petition, the license has been renewed by the said authority from time to time and the last renewal is valid till 31.12.2000. The petitioner has also relied on the certificate of safety dated 3.4.1995 (Annexure "G") issued by the Assistant Manager (Engg.) of the respondent Corporation and also certificate of tank testing dated 3.4.1995 issued by the same officer. The above certificates indicate that the petitioner has already installed the tank of 20,000 ltrs. capacity and that the service station has been constructed in accordance with the conditions of license and that the enclosure walls and embankments of the tank are of such a nature and so installed and secured so as to ensure safety. The petitioner has further stated that the petitioner has spent about Rs.5.85 lacs for installing the tank and for making other necessary arrangements for commencing the consumer diesel pump after getting the approval letter dated 7.12.1994

(Annexure "B"), but still the respondent is not supplying HSD diesel inspite of several reminders. The details of the expenditure incurred by the petitioner are given in para 6 (B-1) of the petition.

3.2 Similarly, the petitioner of Special Civil Application No. 7753/1999 (M/s Shakti Agro Consumer Sanstha) is a Co-operative Society of the agriculturists. The said petitioner had also similarly applied for a consumer diesel pump and by its letter dated 22.11.1994 (Annexure "B"), the respondent granted the approval and also sent a copy of the lay out plan. Here also the petitioner was asked to obtain No Objection Certificate from the District Magistrate and necessary explosive permission. In this case also, the District Magistrate gave No Objection Certificate dated 9.3.1995 (Annexure "D") and the Deputy Chief Controller of Explosives, Bombay issued license dated 5.4.1995 (Annexure "C"). Initially, the said license was valid upto 31.12.1991 and thereafter, the same was renewed from time to time and is now valid upto 31.12.2000. The said petitioner has also produced the certificate of safety dated 20.3.1995 and certificate of tank testing dated 20.3.1995 (Annexure "F"). The petitioner has further averred in para 6(B-1) that the petitioner has spent about Rs.4.70 lacs after getting the approval letter dated 22.1.1994 by installing the tank and by making all other necessary arrangements and still the respondent is not supplying HSD diesel to the petitioner inspite of repeated reminders.

4. Affidavit in reply has been filed on behalf of the respondent. The defence urged in the said affidavit is that the consumer pumps are given to the concerned parties for their own use of petroleum products and that, therefore, the procedure for granting such permission is entirely different from the procedure for grant of retail outlet dealership. However, the Petroleum Ministry came to know about the violation of the terms and conditions on which such consumer pumps were granted by sale of diesel to outsiders and other malpractices. It is further stated that merely getting NOC from the District Magistrate or the license for explosives would not entitle a person to get supply of diesel and that since the underground storage tanks have not been installed, the question of obtaining a license would not arise. (The said affidavit was filed on 4.4.2000. However, the petitioners have produced the aforesaid certificates dated 3.4.1995 and 20.3.1995 showing that the tanks were already installed).

The principal defence urged in the reply

affidavit is that the Government of India has issued instructions dated 23.9.1995 stating, inter alia, as under :-

(iii) Regarding Consumer Pumps, progress on cases not cleared and not yet commissioned is to be kept in abeyance.

(iv) Sales to general public from Consumer Pumps, wherever going on, to be stopped forthwith."

The respondent has also relied on the guidelines dated 12.9.1996 particularly those which relate to sanction of consumer pumps. Para 2 of the said letter reads as under:-

"2. In view of the above, the policy for sanctioning of consumer pumps has been reviewed by the Government and it has been decided that the Oil Companies will now follow the following guidelines procedure with immediate effect for sanctioning of Consumer Pumps :-

(i) Consumer Pumps to Government organizations/Government projects/PSUS only can be sanctioned by the Committee of the senior most representatives of all Oil Companies in the state under the convenorship of the State Level Coordinator. The Consumer Pumps will be sanctioned only in genuine cases. The State Level Committee will ensure that the distribution of the Consumer Pumps among the Oil Companies will be regulatable and generally in accordance with the SPE of the Oil Companies.

(ii) All cases for sanction of Consumer Pumps to semi-Government and private Consumers will be submitted to the Ministry of Petroleum and Natural Gas through the concerned State Level Committee.

(iii) No Consumer Pumps except in accordance with the above instruction should be commissioned by the Oil Companies henceforth.

(iv) In no case, retail sale to

> outsiders/general public should be made by the Consumer Pumps and in no case the requests of Consumer Pumps for conversion to regular ROS will either be forwarded by the Oil Company or entertained in the Ministry."

It is further submitted that the petitioners want the respondent to execute a contract or an agreement in favour of the petitioners and, therefore, in these petitions under Article 226 of the Constitution, this Court would not issue a writ to direct the respondent Corporation to enter into a contract. Reliance is placed on the decision of the Apex Court in Indian Oil Corporation Ltd. vs. Amrutsar Gas Service, 1991(1) SCC 533 and other decisions.

5. At the hearing of these petitions, the learned counsel for the petitioners has submitted that the respondent has been misinterpreting and misapplying the aforesaid instructions of the Central Government which have not prohibited the Indian Oil Corporation from supplying diesel or from entering into an agreement with the parties when the sanction letters were issued before 9.9.1995. In fact, the said approval letters were issued in November/December, 1994. Hence, the respondent was required to consider the petitioners' cases without being influenced by the aforesaid circulars.

It is further submitted that acting on the sanction letters issued by the respondent in November/December, 1994, the petitioners proceeded to construct the tanks and installed them in 1995 itself and the petitioners have spent Rs.5.85 lacs in one case (Spl.C.A. No. 7751/99) and Rs.4.70 lacs in the other case (Spl.C.A. No.7753/99). The petitioners are, therefore, entitled to invoke the doctrine of promissory estoppel.

6. On the other hand, it is submitted by the learned counsel for the petitioners that in view of the aforesaid instructions of the Government of India, the respondent Corporation has stopped granting consumer pumps after September, 1995 and that granting any such consumer pump after the said circulars would amount to violation of the instructions from the Government of India and that this Court would not issue any such direction. A reference is also made to the orders passed by the Letters Patent Bench in Misc. Civil Application No. 1301/99 in LPA No. 444/99 and reliance is placed on the following observation in the said order :-

"Those consumer pumps which, though sanctioned, have not been commissioned, will be commissioned by the concerned oil company after the receipt of the approval from the appropriate authority."

7. Before dealing with the aforesaid submissions made on behalf of the rival parties, it is necessary to refer to the decisions of this Court in Special Civil Application No. 3887/96 and in Misc. Civil Application No. 697/97 and also in the aforesaid petition. Special Civil Application No. 3887/96 was also filed for a similar relief that inspite of sanction of consumer pump in favour of that petitioner as early as in 1995, it was not commissioned and supply of diesel for the consumer pump was not released. After hearing the parties, a learned Single Judge (Coram : Hon'ble Mr Justice S.D. Pandit) allowed the writ petition by judgment dated 27.1.1997. The respondent Corporation carried the matter in appeal pointing out that certain circulars containing policy decision could not be brought on record when the petition was heard and that if that material had been brought on record, the learned Single Judge would not allow the petition. Hence, the Corporation was permitted to move an application for review before the learned Single Judge. Accordingly, the respondent-Corporation filed a review application being Misc. Civil Application No. 697/97 pointing out the circulars including the Circular dated 12.9.1996. After considering the same, this Court (Coram : Hon'ble Mr Justice S.D. Pandit) dismissed the review application by judgment and order dated 4.4.1997, specifically holding that where the consumer pumps were sanctioned before issuance of such circulars and the parties had installed the tanks and obtained the necessary certificates like explosive licenses, the parties were entitled to have the pumps commissioned and to get the supply of diesel. The said judgment dated 4.4.1997 was carried in appeal. The Division bench confirmed the judgment of the learned Single Judge by dismissing LPA No. 462/97 on 1.5.1997. The Division bench noted the following relevant facts and approved the decision of the leanred Single Judge :-

"In the instant case, the respondent-original petition had applied in the year 1994 for sanction of consumer petrol pump and admittedly by letter dt. 20.1.95 the appellant had sanctioned consumer petrol pump in favour of the respondent-original petition.

We are in agreement with the learned

> Single Judge that when sanction was granted in the year 1994, it was not open to the appellant-Corporation to place reliance on circulars/letters dt. September 12, 1996 and November 19, 1996. When sanction was granted it was expected of the Corporation to instal consumer petrol pump and to supply commodity. It is not open to the Corporation thereafter to delay the installation of the petrol pump and to deprive the benefits arising from the grant of sanction of petrol pump in favour of the party and in the meanwhile, relying on subsequent circulars and/or letters, refusing relief. To uphold the contention would be to permit the party to take undue advantage of his own wrong. This cannot be permitted. When the learned Single Judge has rejected the contention of the appellant Corporation, we do not see any infirmity therein."

The Court is informed that the aforesaid judgment in the Letters Patent Appeal was also challenged before the Apex Court and the SLP was dismissed.

8. Having regard to the aforesaid judgment dated 4.4.1997 in Misc. Civil Application No. 697/97 and the judgment of the Letters Patent Bench in LPA No. 462 of 1997 and having gone through the circulars dated 23.9.1995 and 12.9.1996, it appears to the Court that there is considerable force in the submissions made by the learned counsel for the petitioners that the guidelines contained the aforesaid circulars apply only to the consumer pumps which were not granted any clearance/sanction or approval prior to the date of issuance of the circulars and that it was after the date of issuance of the circulars that the respondent was prohibited from issuing any approval letter as such. However, in case of the petitioners such letters were issued in November/December, 1994 and, therefore, there is no impediment to the respondent considering the petitioners' cases on their own merits without being inhibited by those circulars. Hence, the contention urged on behalf of the respondent that the respondent was prohibited from considering the petitioners' cases for grant of consumer pumps cannot be accepted.

As far as the order passed by the Letters Patent Bench in Misc. Civil Application No. 1301/99 in LPA No. 444/99 is concerned, that order was passed in matters which were not at all similar to the present petitions or to Special Civil Application No. 3887/96 as these

matters pertain to cancellation of the consumer pump agreements on account of the allegations about irregularities in sale of diesel to non-members.

9. Moreover, it is also required to be noted that the petitioners had already acted on the basis of the aforesaid approval letters issued in November/December, 1994 and proceeded to incur expenditure of about Rs.5.75 lacs in the first case (Spl.C.A. No.7751/99) and Rs.4.75 lacs in the other case (Spl.C.A. No. 7753/99) by installing tanks and by making other arrangements, the details of which are given in para 6(B-1) of the respective petitions.

Considering the aforesaid steps taken by the petitioners and considering the facts that the petitioners accordingly acted to their detriment relying on the approval letters and also considering the fact that the claims made by the petitioners on the basis of the pre-circular situation cannot be said to be contrary to the aforesaid circulars, the petitioners are entitled to invoke the doctrine of promissory estoppel and to require the respondent to commission the consumer pumps and to supply diesel to the petitioners' pumps for the benefit of the members of the petitioner societies.

10. In this connection, a reference is also required to be made to the letter dated March, 2000 from the Government of India to the Director (M) of Bharat Petroleum Corporation Ltd. (Annexure "I") wherein it is mentioned that where the party has been granted approval and the party has installed the tanks and pumps at their site, the instructions contained in the Government letter dated 13.9.1995 do not prohibit the oil Companies from sanctioning the Agro Consumer Pumps. Considering the fact that the petitioners were granted approval letters way back in Novmber/December, 1994 (Annexure "B" to the respective petitions, and considering the aforesaid instructions of the Government of India, the petitions deserve to be allowed.

11. As regards the contention that this Court should not entertain a petition in contractual matters, it is required to be noted that the respondent, which is a State within the meaning of Article 12 of the Constitution, is refusing to commission the diesel pumps of the petitioners on irrelevant considerations as discussed above and, therefore, the respondent has acted illegally and arbitrarily in violation of Article 14 of the Constitution.

12. In view of the above discussion, the petitions are allowed. The respondent is directed to consider the petitioners' cases for commissioning the consumer pumps on the basis of the approval/sanction/clearance letters dated 7.12.94 and 22.11.94 to M/s Bhagwati Agro Consumer Sanstha and to M/s Bhakti Agro Consumer Saznstha respectively and to enter into the necessary agreements within one month from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

Rule is made absolute. There shall be no order as to costs.

(M.S. Shah, J.)

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